REMARKS

Claim rejections under 35 U.S.C. 103(a)

Claims 10-14, 16-18, and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over AU 9715194 in view of Etnyre (US 4,756,763) in view of Gaw (US 3,960,585).

Claims 20-24, 30, 32, and 35 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Gaw (US 3,960,585) in view of Etnyre (US 4,756,763).

Claim 33 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Gaw (US 3,960,585) in view of Etnyre (US 4,756,763) as applied to claim 32, and further, in view of Hayner (US 6,133,351).

Claim 34 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Gaw (US 3,960,585) in view of Etnyre (US 4,756,763) and Hayner (US 6,133,351) as applied to claim 33, and further, in view of Burris et al. (US 6,706,787).

Claims 38-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Etnyre (US 4,756,763) in view of Gaw (US 3,960,585) as evidenced by Kopvillem et al. (US 3,738,853).

Applicant respectfully traverses the rejections. Reconsideration and withdrawal of the rejections are respectfully requested in view of the remarks.

The prior art relied upon by the Office Action, AU 9715194 A, US 4,756,763 to Etnyre, US 3,960,585 to Gaw, and US 3,738,853 to Kopvillem et al., has been previously summarized in Applicant's Amendment filed on July 11, 2008. Applicant incorporates such summary herein at this point by reference and reiterates such summary. Hayner (US 6,133,351) and Burris et al. (US 6,706,787) are being utilized by the Office Action for the first time.

US 6,133,351 to Hayner

Hayner Abstract discloses a sulfur in oil in asphalt and polymer blend. An asphalt and polymer blend is first prepared and then a slurry of solid sulfur in liquid oil added. Addition of a slurry of solid sulfur in oil or oil containing sulfur compounds, permits rapid and effective

uniform dispersion of the sulfur component in the asphalt/polymer blend. Uneven mixing, which can occur when sulfur is separately added as a solid to the asphalt blend, is avoided. Polymer use is optimized because polymer matrix development (digestion/swelling) can be completed before cross-linking occurs. The method is safer because formation of explosive clouds of sulfur dust is avoided.

Applicant suggests that the Office Action is using improper hindsight to combine Hayner, with an emphasis on the use of polymer, with Gaw and Etnyre.

US 6,706,787 to Burris et al.

Burris Abstract discloses that a method of preparing an asphalt emulsion composition comprises preparing an aqueous emulsion of a synthetic polymer and asphalt mixture, and blending the aqueous asphalt/polymer emulsion with reclaimed rubber particles wherein the ratio of polymer:rubber particles is between about 1:2 and about 1:20, by weight, respectively, at ambient temperature. The final composition may also contain one or more solids selected from a rheological agent, gilsonite, carbon black, surface active clay and polymer fibers, and mixtures thereof.

Applicant suggests that the Office Action is using improper hindsight to combine Burris, with an emphasis on an aqueous emulsion of a synthetic polymer and asphalt mixture, with Gaw in view of Etnyre and Hayner.

As indicated in Applicant's previous Amendments and reiterated herein, the cited prior art references clearly fail to disclose high sulfur content compositions that contain a significant concentration of a hydrogen sulfide suppressant. And, in fact, the prior art references actually teach away from such compositions or their use in the formation of materials containing asphalt and sulfur used with aggregate materials that can be formed or used as a paving material. There is absolutely no suggestion in the prior art teachings that a sulfur pellet with a hydrogen sulfide suppressant may be formed at a separate location than which an asphalt composition is formed and where the sulfur pellet is added.

Also, no combination of the references teaches a composition that is predominantly or close to entirely all sulfur and which further has a concentration of hydrogen sulfide suppressant.

Independent claims 20 and 38 use the partially closed transitional language "consisting essentially of" to make it clear that the sulfur compositions or pellets exclude the substantial presence of bitumen or aggregate, or both. With this limitation, it is absolutely clear that the claimed compositions are patentably distinguishable over the prior art.

Applicant has also previously amended several claims, for example, claims 10 and 16-18, and has previously added new claims 43-45, in view of the Declaration under Rule 37 CFR 1.132 of inventor Imants Deme that was filed on July 11, 2008.

Applicant suggests that an example benefit of Applicant's invention may be that the hydrogen sulfide suppressant may be more homogenously incorporated in the resulting sulphur-comprising asphalt paving mixture because the hydrogen sulfide suppressant is added as part of one of the components, instead of adding a relatively small amount of, for example, a liquid hydrogen sulfide suppressant, to a relatively large mixture of solids and liquids.

Applicant also suggests that another example benefit of Applicant's invention may be that in the resulting sulphur-comprising asphalt paving mixture, the hydrogen sulfide suppressant may be in the vicinity of the sulphur because the sulphur pellets comprise the hydrogen sulfide suppressant. Thus, a higher efficiency of the hydrogen sulfide suppressant in a sulphur-comprising asphalt paving mixture may be provided.

Regarding the Declaration under Rule 37 CFR 1.132 of inventor Imants Deme that was filed on July 11, 2008, Applicant suggests that the amount of hydrogen sulfide emitted from a paving mixture prepared using a sulphur pellet according to an embodiment of the invention, wherein the sulphur pellet comprises the hydrogen sulfide suppressant, is less than half of the amount of hydrogen sulfide emitted from a paving mixture wherein a hydrogen sulfide suppressant is added separately.

Applicant suggests that the references, alone, or in combination, do not disclose that a sulphur pellet comprising a hydrogen sulfide suppressant would provide a higher efficiency of the hydrogen sulfide suppressant in a sulphur-comprising asphalt paving mixture.

CONCLUSION

Applicant respectfully requests reconsideration and withdrawal of the Office Action rejections. Applicant further respectfully requests entry and consideration of the above remarks to advance the above-identified application to allowance.

Respectfully submitted,

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